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Hard Times and Rough Rides: The Legal and Ethical Impossibilities of Researching ‘Shock’ Pornographies

Dr Steve Jones and Dr Sharif Mowlabocus

‘Extreme’ pornography has recently come under intense scrutiny within the context of the Criminal Justice and Immigration Act which was introduced by the British Government in 2007, and which will make the possession of extreme pornographic material a criminal offence. The Act is viewed by many as a direct response to a campaign launched following the murder of Jane Longhurst in 2003. During the trial, the prosecution drew particular attention to the defendant’s (Graham Coutts) fetish for erotic asphyxia, linking Longhurst’s murder to pornographic images downloaded by the defendant.

The Act focuses on the representation of ‘extreme’ sexual behaviours, defining an ‘extreme pornographic image’ as one which ‘appears to have been produced solely or principally for the purpose of sexual arousal’, including depictions of:

- (a) an act which threatens or appears to threaten a person’s life,
- (b) an act which results in or appears to result (or be likely to result) in serious injury to a person’s anus, breasts or genitals,
- (c) an act which involves or appears to involve sexual interference with a human corpse
- (d) a person performing or appearing to perform an act of intercourse or oral sex with an animal.

The legislation poses difficulties for researchers, and it is on the methodologies and ethics of researching extreme pornographies that this paper is focused. We have chosen to focus our discussion on the issue of scholarly research only, as the effects on *teaching* pornography raise separate concerns and require their own detailed investigation. Those wishing to pursue this line of enquiry may wish to begin by exploring the existing literature dealing with ethical issues raised by “porno-pedagogy” (Austin, 1999; Curry, 1996; Driver, 2004; Jenkins, 2004; Kirkham & Skeggs, 1996; Kleinhans, 1996; Lehman, 2006; and Reading, 2005).

We begin by setting the debate in context, examining the Bill in relation to the media effects model, and drawing attention to the mutable nature of extreme pornographies as a genre. This is a particularly important consideration given that extreme pornographies regularly blur boundaries between porn and horror. We demonstrate how the researcher of extreme pornographies must contend with the ambiguous interpretation of images in the legislation. We also investigate who is permitted to view extreme imagery and the motivations that justify access. This discussion necessarily underscores the methodological and ethical implications of undertaking such research in the academic context. One may seek to justify the need to study extreme material, yet defending the right for open access to the same material beyond the academy poses its own problems.

What is Extreme Pornography? Genre, Convention and the Challenges of Identification

The focus on visual media in the Longhurst case is reminiscent of the James Bulger case of 1993, where it was rumoured that his murderers, Jon Venables and Robert Thompson, had been influenced by a certificated horror film - *Child 's Play 3* (1991) - though they were never proven to have actually seen the film in question (Kerekes & Slater, 2001: 325). Both cases demonstrate the pervasiveness of an outmoded media effects model, in which images are seen as a stimulus for behaviours (see Segal, 1993 for a critique of this model). The extreme pornography legislation responds to a campaign which argued for a connection between representation and violence. Longhurst 's murderer was said to be 'obsessed' with violent and necrophilic Internet porn, and as Longhurst's sister, Sue Barnett, argued, ' [t]he most effective strategy was always going to be to make it illegal to view [extreme] material' (in O' Brien, 2006).

The model of media effects utilized here has been widely questioned by psychologists, as well as media and film academics (Gauntlett, 2001; Baron, 1983; Zillman & Bryant, 1984). Critical focus has instead turned to a paradigm that places as much emphasis on the point of decoding as encoding. According to this model, the production of meaning is not characterized as static but as a dynamic process in which the audience produces a range of meanings and understandings from any given text based on their own cultural position (Hall, 1973).

However, in the Longhurst case, the hypodermic effects model is linked with a mode of consumption that involves an aberrant decoding of images that does not correspond with the reading intended in its production. According to the legislation, the consumption of images extracted from otherwise non-pornographic classified films can become prosecutable if it is considered that they have been used 'solely or principally for the purpose of sexual arousal'. This would mean that the images of mutilation from a certificated film such as *Saw* (2004) or of asphyxiation in a film such as *Rope* (1948) could be deemed pornographic if they were proven to have been isolated from the rest of the text by the viewer for the purposes of sexual gratification.

Pornography evades legal definition, as famously concretized in Supreme Court Justice Potter Stewart's declaration 'I know it when I see it' (Stewart, 1964). Much debate over categorising obscene imagery is centred on American legislation, not least in relation to the constitutional right to free speech (see Klein, 2006; McGuire & Caldeira, 1993; Miller, 2000; and Robbins, 1973, for examples). In Britain, the Obscene Publications Acts (1857, 1959 and 1964), the Protection of Children Act (1978), and the Sexual Offences Act (2003) have been invoked to cover most cases involving images that may be considered pornographic, but these benchmarks are far from indisputable. While Kieran (2002) provides a critical overview of attempts to answer the question 'what is obscenity?', defining pornography is made difficult by the wide variety of pornographies that are available: Hard-core and Soft-core; Heterosexual, Homosexual, and Bisexual; Art, Alt and Freak porn (for critical responses to this variety, see Dyer, 1985; Ellis et al., 1986; Church Gibson & Gibson, 1993; Straayer, 1996; Strossen, 1995; and Williams, 1989).

Additionally, in its imperative to cater as widely as possible, pornography tends to adopt and combine a host of generic conventions, often blurring boundaries. Pornographic film has a long-established tradition of appropriating narratives and motifs from other genres, as titles such as *Jurassic Pork* (1995), *Malcolm XXX* (1992), or *In Diana Jones and the Temple of Poon* (1996) illustrate (see Hunter, 2006; and Smith, 2009). However, films that combine hard-core sex with graphic violence, such as *Porn of the Dead* (2006), *BoneSaw* (2006), and *XXXorcist* (2006) move beyond parody and generic 'borrowing' to a point where the audience may become uncertain as to exactly what genre of film they are watching - the film being at once 'too horrific' to be porn, and too sexually focused to be horror. As O'Toole writes, 'placing deeply tangled issues like desire and consent alongside hard-core sex is making a juxtaposition most people find simply unacceptable' (1999: 359). The Extreme Porn Act concretizes such a fear, and thus if either horror or porn texts blur their generic boundaries too far, they are deemed "extreme".

While the BBFC (British Board of Film Classification) certificated *Saw* and *Hostel* (2005) as belonging to the horror genre, they have been dubbed 'Torture Porn' in their critical reception because of their graphic and excessive depictions of violence and mutilation (Edelstein, 2006). The labelling of a horror cycle as a type of pornography in the popular press echoes the arguments of earlier pro-censorship, anti-pornography feminists which have often coupled sex and violence (Radford & Russell, 1992: 203-19). Indeed this combination is at the root of the influential Dworkin/Mackinnon view of pornography as a degrading and violent attack upon women and women's rights (see Dworkin & MacKinnon, 1988). The horror film, *The Texas Chain Saw Massacre* (1974), has been envisaged as porn on this basis (Everywoman, 1988: 19) despite not containing a single sexual act, while the British group, Campaign Against Pornography and Censorship include 'torture, flaying, cannibalism, crushing of breasts in vices, exploding vaginas packed with hand-grenades, eyes gouged out, beatings, dismemberings, and burnings' in their discussion of what constitutes hard-core pornography (Smith, 1993: 72 - 81).

Such confusions reveal a crisis over what the term 'porn' signifies - suggesting that porn may be less concerned with images of sexual pleasure than with various attempts to expose the body. But if this is the case, then the Act is even more disconcerting, given that it hinges on an ability to identify what is both 'pornographic' and 'extreme'.

Perhaps the most concerning aspect of the Act is its ambiguity, which provides the scope for a multitude of acts and practices to come under increased scrutiny and potentially face prosecution. Organisations such as Liberty, Backlash, the Libertarian Alliance, the Joint Select Committee on Human Rights, and Consenting Adult Action Network have disputed the Act, especially in regard to the potential persecution of persons engaging in consensual sadomasochistic activities (Melonfarmers, (a) n.d.).

What might be considered extreme pornography under the legislation? As should have already become clear, the answer is contentious to say the least, owing to the vagaries of the law. However, it is likely that the following texts and practices will face difficulties under the new legislation. These include acts such as CBT (cock and ball torture),

electro-stimulation (where electrical currents are administered to specific areas of the body), fisting, rough anal and other forms of penetration that are considered violent or in some way harmful. Almost certainly (in the light of the Longhurst murder trial) breath control and erotic asphyxiation would become vulnerable to prosecution, as would fishhooking, bukkake, and BDSM. The fictitious depiction of bestiality, rape, necrophilia and humiliation found in certificated films such as *Baise Moi* (2002), *Boy Meets Girl* (1994), *Snuff* (1976), *Irreversible* (2003), *Island of Death* (1975), and *Kissed* (1996) would almost certainly have been rejected by the BBFC if the legislation had been in place prior to their classification - indeed, several of these titles have previously sustained cuts or been rejected. In terms of online content, websites, which are not yet subject to such categorisation, become central to the extreme porn debate because of the relative representational freedom they have enjoyed. Necrobabes.com, Youporn.com, Dr-Weird.com, Brutal-Femdom.com, and Deepthroatgag.org feature amateur and/or professional representations of whipping, slapping, rough oral, gagging, trampling, hard restraint and (simulated) forced sex, all of which contravene the proposed legislation as well as existing BBFC guidelines at R18, and thus such sites may find themselves under scrutiny.

This is by no means a definitive list - such a list has yet to be published by the Government and is almost certainly impossible to produce due to the international and transient nature of cyberspace. The examples identified here should be treated as emblematic. It should also be noted that there is a distinct blurring of the line occurring between reality and fiction, and between 'practice' and 'representation'.

From a technological perspective, the issue also becomes more important when we acknowledge the fact that researchers have unprecedented access to unclassified film material via the internet. Indeed, digital technologies of networked communication seem to be the unnamed guilty party in the Longhurst murder - and the shadowy figure with which the Act is set to lock horns in the future. Commercial porn from around the world is now easily viewed online, regardless of classification systems, and websites such as Xtube.com, Tube8.com and xhamster.com now provide 'amateur' pornographers with an avenue for the commercial distribution of their material (Lane, 2000), none of which is classified by the BBFC.

Who Can Look at Extreme Pornography?

Academics cannot remain indifferent to issues of prohibition. Film has long been subject to legal sanction. The Video Recordings Act of 1984, which was designed to restrict the distribution of sexual and violent images in the UK, was enforced by house raids to prevent uncensored material being circulated privately (see Kerekes & Slater, 2001: 287-313). A system of classification was subsequently employed by the BBFC to determine what could and could not be supplied, and where such classified material could be sold. The law regarding unclassified material states that 'It is an offence to supply or offer to supply, or to have in possession for the purposes of supplying, an unclassified video recording. The Video Recordings Act provides for powers of entry, search and seizure and for the forfeiture of video recordings by the court' (BFI online).

While certification may provide a level of legal protection for researchers, much extreme material remains unclassified and researchers face obstacles both inside and outside their host institutions if they attempt to study it. Mikita Brottman managed to evade prosecution over attempts to import unclassified horror material for her book *Meat is Murder!* (1998) because of the 'admittedly minor ... emphasis on censorship' which legitimated her research and 'the headed notepaper of [her] university department' - at the time, she was based within the University of East London. Tellingly, she now works in 'the US Midwest' where 'they don't require you to have a Ph.D. from Oxford to watch a low budget horror film' (Kerekes & Slater, 2001: 309). In contrast, David Flint, who was not attached to a university, was subject to several raids and threatened with criminal charges for possessing uncertificated material during the authorship of his 1999 book on mainstream porn, *Babylon Blue* (Kerekes & Slater, 2001: 305). In the event, Flint evaded criminal prosecution because he 'had the leverage of the press coverage behind him as well as the services of a "heavyweight London barrister"' (Kerekes & Slater, 2001: 306). However, whether the academy is prepared to support academics in their research or not, the legal rights of the individual citizen are beyond the remit of institutional protection.

Of course, some individuals, such as those working for the BBFC, will continue to be allowed to view illegal material. Sections of the British police force also spend time categorising images of child sex abuse ('child porn') according to a spectrum of danger and severity. Lawyers are another group expected to view unclassified material, though solely in relation to specific criminal cases where the viewing, supplying or manufacturing of such material is being considered as a motivating force behind a crime, or is the crime itself.

In these cases, the law is suspended to allow the analysis of extreme material, whereas it is not for academics unless they are part of a sponsored project, working on behalf of or with governmental agencies (see, for example, Barker, 2007). The reason lies in the motivation for the kind of analysis undertaken by censors, police and lawyers. It aims to censor or prosecute: objectives that are clear before the analysis has even begun. Officers working in the vice division, lawyers working for the CPS, and members of the BBFC's classification board will only view extreme pornography in order to restrict it and in the case of the judiciary and the law enforcers, in order to identify, blame and punish producers, distributors and consumers.

Conversely, the academic engages in a project that seeks to *understand* such material. This need not imply support for pornography; we need only think of the work of Robin Morgan (1978), Suzanne Kappeler (1986), or John Stoltenberg (1991) to see that academic studies of pornography may be arguing *against* its proliferation. However, the critical lens through which such work is undertaken does not *a priori* suggest a punitive gaze, and does not guarantee the repression of such material, or the bringing to account of those who produce or consume it.

Because of this, it is much less easy to argue for the rights of individual academics to scrutinize the same images. As named authors, researchers are made vulnerable by the process of individuation, even though they may be associated with an institution.

Approaching university ethics committees with a proposal to study uncensored (and therefore illegal) material is only the first hurdle. Even if study is supported, the writing produced, once made public, may serve as evidence that the author has broken the law by viewing prohibited material. While the new legislation does have a clause allowing 'legitimate reason for being in possession', there is a distinct lack of clarity as to what is deemed legitimate, making possession risky for any academic.

In his recent analysis of pornography and masculinity in American culture, Robert Jensen suggests two benchmarks that need to be considered when discussing pornography in contemporary American culture:

First, imagine what we could call the cruelty line - the measure of the level of overt cruelty toward, and degradation of, women in contemporary mass-marketed pornography. That line is heading up, sharply. Second, imagine the normalization line - the measure of the acceptance of pornography in the mainstream of contemporary culture. That line also is on the way up, equally sharply (Jensen, 2007: 16).

Surely it is the role of the academic researcher to examine representations of degradation and humiliation, to analyse them as cultural artefacts, and explore their cultural origins and significance? When Jensen poses the question '[i]f pornography is increasingly cruel and degrading, why is it increasingly commonplace instead of more marginalized?' (2007: 16), it is up to academics to provide a critically rigorous and multi-faceted answer.

Jensen does offer his own answer - that America is a culture that thrives on cruelty and degradation (2007: 17, 49 & 137-149), but we argue that this is only one of many possible answers. Others might argue that violent imagery is no more prevalent than before - that the graphic violence of 'torture porn' is an extension of tropes founded in the video nasty era (see Barker, 1984; and Martin, 2007) and is barely any more gratuitous, or that there is little difference between hard-core rape films of the seventies such as *Forced Entry* (1973), and the equally fictitious rape-porn of maniacdiaries.com, beyond the modes of dissemination and the specific practices that characterize the pornography of the moment, such as images and clips of skull-fucking, throat-gagging, bukkake, gangbang and double anal-penetration (Jensen, 2007: 51-77).

However, if we undertake that representations of humiliation *have* become more prominent and acceptable in Western culture (Paasonen et al., 2007), then academics should be allowed access to these materials in order to discover why this is so, and how such a trend can be understood. Any such research would be seriously flawed if it did not include a detailed analysis of its objects of study. If we are to fully understand extreme pornography, we must create an ethically rigorous framework in which such material can be viewed by researchers without fear of prosecution or institutional disciplinary action. This framework must not be organized as a punitive measure; investigation must be separated out from incrimination. And while adhering to strict codes of ethical conduct, academic research must be free to draw conclusions based not on political trends and opinion but on data, on argument, and on evidence.

Should Extreme Pornography be Censored? The Implications of Access

While there are good grounds for contending that researchers ought to be allowed to research extreme pornography, such a suggestion poses its own problems. In a recent article on user-generated content and representations of the penis, Peter Lehman noted the shift in attitudes towards sexually explicit material caused by the advent of the photograph:

The impact of literary pornography was initially limited to the literate upper and middle classes. But with the invention of photography and cheap methods of printing and distributing photographs by the late nineteenth century, the modern notion of pornography arrived. And it has never left. The wider audience prompted a particular hysteria that pornography was no longer produced just for those who presumably can "handle it" (due to wealth, education, and privilege) and can pay for it in a manner that does not threaten the social fabric. Photography could be cheaply distributed and enjoyed by the unwashed, illiterate masses. And thus began the fear that porn could and would be the ruin of us all (Lehman, 2007: 109).

However, the dilemma at hand extends beyond the moral utopianism of freedom of speech arguments. While we may argue that socio-cultural studies of extreme pornographies are important and even necessary, we must be careful to avoid the implication that researchers are apart - or above - the standards set for the 'general public', or that academics should have access to materials that others may not. To argue this would imply that persons outside of academia are incapable of understanding or appreciating the same material and its contexts with the same intellectual capacity. This kind of argument legitimates systems of class privilege which reproduce normative ideological imperatives by positioning 'the "uneducated"', or 'the working class' as the Othered victims of 'media effects' (Gauntlett, 2001: 57 - see also Kipnis, 1996; and Kendrick, 1987).

To many this is of little consequence or concern; the ivory towers that rise out of the British academic landscape appear as secure and solid as ever before. But upholding an elitist binary between researchers and 'the common people' is snobbish and narrow-minded. It risks abstracting research and researchers from culture, and the object of research from its contexts of production and consumption. It also positions academics as sexless - frigid research machines devoid of sexual desire. Of course, they must be conceptualized in this way for this system to work. If this is not maintained - if it transpired that the researcher was in fact a bit turned on by the pornographic images they study - then they would be no better than the masses 'outside'.

The debates about whether we should study pornography may continue to rattle on but they sound more and more hollow with each round of discussion. Pornography is not only a valid area of study, it is a *vital* area of study. How we should study pornographies and the ethical implications of that study is an area that continues to evolve and demands our attention. The need to debate methodologies, research frameworks, and ethical dilemmas is increasingly important in the UK as a result of the new legislation.

We finish our discussion by identifying potential avenues for further research in order to both illustrate the importance of studying extreme pornographic representations and highlight what is at stake for such research in light of the 'Extreme Porn' Act. Firstly, if we acknowledge that extreme porn centres on revealing the body and parts of the body in tight close-up (Williams, 1989: 181-2), we must consider the relationship between scenes of 'torture porn' (in films such as *Hostel* for instance) and the scenes of operation, amputation and 'opening up' to be found in contemporary television drama - *CSI* (2000-present), for example, and documentary including Gunther von Hagens' *Anatomy for Beginners* (2005). Multiple representations of body rupture have become immensely popular in Western culture and we should trace this theme as it runs through an otherwise diverse constellation of texts. Doing so allows us to explore the potential meanings behind this spectacle of the body - a returning to the body on display, and a body at the very limits of life. These meanings cannot, as yet, be known, but may reflect an ontological crisis brought about by an increasingly cyborgian corporeality (Haraway, 1991; Kurtzweil, 2005); a fear of contamination and biohazard in the post-9/11 landscape of terrorist attack; an ongoing alienation of the body through late capitalist structures of labour (Deleuze & Guattari, 2004; Newitz, 2006); or, paradoxically, a reconnection with the flesh in a time of supposed virtual disembodiment (Levidow & Robins, 1989).

The theme of terror, played out on the surface of the mutilated body must also be considered in future research. The horrifying images of humiliation, torture and other dehumanising acts that emerged from Abu Ghraib prison in 2004 shocked the world and provoked international outrage and condemnation (Hooks & Mosher, 2005). Yet fictionalized accounts of terror, pain and suffering for another's gratification were at the heart of films such as *Saw* (2004), and *Wolf Creek* (2005), both of which made in excess of \$25 million at the box office in the US, the latter grossing a phenomenal \$103 million worldwide (The Numbers, n.d.). Thus, the second area of focus we identify is predicated on the need to understand the relationship between fictional and non-fictional representations of torture and violence within the context of George W. Bush's 'War on Terror'.

Then there is the question of technology. How do technologies of mediation serve to both extend our vision of the body through 'internal' photography such as colonoscopy and colposcopy (Warner-Marien, 2006: 42) and our ability to transmit such visions via digital imaging and networked communication systems. The internet has become the foremost arena for distributing uncensored material and digital technologies of communication cannot be separated out from the production and consumption of extreme pornography. But the internet should not be seen only as a device for dissemination; it also provides a point of interaction between producers and consumers (an increasingly porous boundary) and between consumers themselves. Discussions that 'frame' extreme material are likely to be just as important to the researcher as the material itself. Arguably, the employment of Bourdieu's theory of cultural capital (1984) or Hebdige's work (1979) on subcultures would reveal that fans of extreme pornography are not a homogenous mass, but are engaged in practices and discourses that serve to create subcultural hierarchies, which both police the borders of the community and define the meaning and content of such material. The issue

of child sex abuse (and images of 'child pornography') would doubtless bring to the surface such practices of boundary maintenance and (self) classification.

Finally, we identify the need for research to take into account the repositioning that consumers of extreme pornography face, when, overnight, their collections of videos and images might become illegal - and their own sexual desires, outlawed. While it is likely that many consumers do not currently consider their consumption of extreme pornography as a political statement, halting their freedom to view such material might serve to change this. In other words, the wo/man who has previously considered their enjoyment of rape fantasy films or S&M images as something private and personal, may begin to recognize themselves as some kind of 'sexual outlaw' following the implementation of the Act. The relationship between reader and text may be altered, making the enjoyment of extreme material a politically subversive act. The Act may produce a new category of sexually dissident people who will have to fight for the right to represent and have represented their desires, practices and identities.

This short list of research questions is enough to highlight the fact that turning our back on extreme pornography (however we choose to identify this) and pretending it does not exist is not an option, let alone a solution. Punishing the individual who views images of sexualized violence or 'violent' sexual practices does not eradicate or significantly hinder the production of such material. It is disconcerting that the production of extreme pornography does not seem to be receiving anywhere near as much attention from lawmakers as has the downloading and viewing of such material. Regardless of whether we should prosecute those who view it, we should be engaged in seeking to understand its appeal and its proliferation in contemporary society.

Will the police come banging on our doors the day after the legislation comes into force? Probably not. But they could, leaving us suddenly on the wrong side of the law, pleading innocence on the grounds of academic research. It is not just in the eyes of the British judiciary system that such a defence should be deemed questionable. Perhaps before embarking on a project involving controversial materials, the researcher should first address the belief, mistaken or otherwise, that while 'I' should be allowed to access material of 'my' choosing, there is a non-specific *somebody* who, for their own good, or for the safety of 'the masses', should not.

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